# LETTERS

**Concerning constitutionality of law governing clinical laboratories.***

STATE OF CALIFORNIA
Legal Department: U. S. Webb, Attorney-General

San Francisco,
November 19, 1935.

Department of Public Health,
State of California,
State Building,
San Francisco, California.

Gentlemen:—Under date of August 16, 1935, there were presented to this office certain proposed regulations of the State Board of Health concerning clinical laboratories. The regulations purport to be those prepared pursuant to Chapter 638 of the Statutes of 1935, such chapter being entitled:

*"An act relating to the conduct of clinical laboratory technologists and clinical laboratory technicians and the issuance of permits to physicians and surgeons conducting clinical laboratories for the purpose of protecting the public health and to provide penalties for the violation of the provisions of this act."*

Since that time very careful consideration has been given to the proposed regulations as well as to the Act itself. Certain opinions concerning the Act have heretofore been rendered to you. These opinions dealt with specific questions, but did not touch the constitutionality of the Act.

The consideration given the proposed regulations has disclosed a situation, however, which causes us to conclude that the entire Act is unconstitutional and hence without force or effect.

Section 1 of the Act provides in effect that it shall be unlawful for any person in a clinical laboratory to make any test or examination requiring the application of one or more of the fundamental sciences therein named "unless said person possesses an unrevoked certificate issued one year from and after the date this Act becomes effective." This refers to technicians. The same section makes it unlawful for any person to make any test or examination requiring the application of one or more of such fundamental sciences unless such person "possesses an unrevoked certificate as a clinical laboratory technologist issued ninety days from and after the date this Act becomes effective."

Section 4 of the Act makes it the duty of the State Board of Public Health to issue a certificate of licensure within ninety days "to each person who shall within sixty days after this Act become effective, show proof of having complied with the qualifications of a clinical laboratory technologist as herein defined."

The same section also provides that it shall be unlawful for any person to act as a clinical laboratory technologist without certification as such from and after ninety days of the going into effect of this Act. It is also provided that it shall be unlawful for any laboratory or technologist or physician and surgeon conducting, maintaining or operating a laboratory to employ any technician except such technician be certified as provided in Section 1 of the Act.

You will note that the law does not provide for the issuance by the Board of a certificate of licensure to anyone who does not within sixty days from the effective date thereof show proof of having complied with the qualifications of a technologist.

You will also note that it is the duty of the Board to issue certificates of licensure to technicians found to be properly qualified; but you will likewise note that, according to Section 1, a technician must possess a certificate issued one year from and after the effective date of the Act and a technologist must possess a license issued ninety days from and after the effective date of the Act.

According to the established rules of statutory interpretation, the language "from and after," as used in Section 1, must be interpreted to mean within one year from and after in the first instance and within ninety days in the second instance. This must logically be so because according to Section 4 it is unlawful for a person to act as a technologist without having been certified within ninety days from and after the effective date of this Act.

It is likewise unlawful for any laboratory or person to employ a technician after one year from the date of enactment of the Act into law unless he be licensed. It must hence follow that only those persons can under this law be licensed who come within the purview of Section 3 of the Act as to technologists, and Sections 1 and 4 of the Act as to technicians. Consequently, all technologists must be issued a certificate of licensure within ninety days of the effective date of the Act and all technicians must be issued certificates of licensure within one year from and after the effective date of the Act.

We are forced to the conclusion that unless a person within these respective time limits qualifies for a license he can never receive one and that persons may not hereafter qualify as technologists or technicians because of the limiting language of the Act. This results in a discrimination without a reasonable basis for classification.

*Aarve* v. *Crosby*, 48 Cal. App. 424.

There must be a reasonable and just relation to the things in respect to which a classification is imposed.

*Barbier* v. *Connelly*, 113 U. S. 27.

The statute would, therefore, appear to be unreasonable and arbitrary for the reason that it does not accord equal protection of the laws to all persons possessing the same qualifications as to education. The time when a person possesses certain qualifications is not a recognized method of regulating a business or profession. I am inclined to the view that the Supreme Court would hold that the legislature could not "under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them."

*Liggett Co.* v. *Baldridge*, 278 U. S. 105.

It is held in the case of *Louisiana State Board of Medical Examiners* v. *Fyfe*, 111 So. 58, that the State may regulate *within reasonable bounds* the practice of medicine and surgery. It is doubtful if it would be reasonable to permit licensure to those with certain qualifications on a given date and at the same time prohibit licensure to persons having superior qualifications at a subsequent date.

Very truly yours,

U. S. WEBB, *Attorney-General.*
By LIONEL BROWNE, *Deputy.*

* See also editorial comment, page 3.

**Concerning baking soda-sodium fluoride poisonings in San Francisco.***

December 13, 1935.

*To the Editor:*—You have, no doubt, read of the recent deaths in San Francisco of some persons from accidental poisoning by sodium fluoride.

These cases are more remarkable in that there is so little in our medical literature relating to their occurrence. Herzog Medical Jurisprudence mentions cases in not recent accidental and suicidal poisonings in New York and Chicago. We have, in my experience in the San Francisco coroner's office, had two deaths, suicidal, one by ant paste, a white person; another by ant powder, a Chinese.

This is one of a variety of cases in the experience of a coroner's office where deaths happen from some cause where the occurrence, if anticipated, might have been prevented by necessary laws.

A somewhat similar case occurred in San Francisco some years ago, where a concern manufacturing oxygen and hydrogen gas put out, accidentally, a highly explosive mixture of oxygen and hydrogen, which, being used for welding purposes, caused an explosion. The coroner's office immediately examined samples of gas under the same serial number, and finding it to be explosive, by telegram and otherwise, called in all tanks of that serial number, but not before another explosion occurred at a distant point. At the inquest following, the company concerned, through its chemists, was about to prove the explosion to have been an "act of God" when two laborers in the works, suddenly called in by the coroner, testified

* See also news item printed in December CALIFORNIA AND WESTERN MEDICINE, page 455.